

§ 344.4 Recordkeeping.

(a) *General rule.* A bank effecting securities transactions for customers shall maintain the following records for at least three years:

(1) *Chronological records.* An itemized daily record of each purchase and sale of securities maintained in chronological order, and including:

- (i) Account or customer name for which each transaction was effected;
- (ii) Description of the securities;
- (iii) Unit and aggregate purchase or sale price;
- (iv) Trade date; and
- (v) Name or other designation of the broker/dealer or other person from whom the securities were purchased or to whom the securities were sold;

(2) *Account records.* Account records for each customer, reflecting:

- (i) Purchases and sales of securities;
- (ii) Receipts and deliveries of securities;
- (iii) Receipts and disbursements of cash; and
- (iv) Other debits and credits pertaining to transactions in securities;

(3) *A separate memorandum (order ticket)* of each order to purchase or sell securities (whether executed or canceled), which shall include:

- (i) The accounts for which the transaction was effected;
- (ii) Whether the transaction was a market order, limit order, or subject to special instructions;
- (iii) The time the order was received by the trader or other bank employee responsible for effecting the transaction;
- (iv) The time the order was placed with the broker/dealer, or if there was no broker/dealer, time the order was executed or canceled;
- (v) The price at which the order was executed; and
- (vi) The broker/dealer utilized;

(4) *Record of broker/dealers.* A record of all broker/dealers selected by the bank to effect securities transactions and the amount of commissions paid or allocated to each broker during the calendar year; and

(5) *Notifications.* A copy of the written notification required by §§ 344.5 and 344.6.

(b) *Manner of maintenance.* Records may be maintained in whatever man-

ner, form or format a bank deems appropriate, provided however, the records required by this section must clearly and accurately reflect the information required and provide an adequate basis for the audit of the information. Records may be maintained in hard copy, automated or electronic form provided the records are easily retrievable, readily available for inspection, and capable of being reproduced in a hard copy. A bank may contract with third party service providers, including broker/dealers, to maintain records required under this part.

§ 344.5 Content and time of notification.

Every bank effecting a securities transaction for a customer shall give or send, by mail, facsimile or other means of electronic transmission, to the customer at or before completion of the transaction one of the types of written notification identified below:

(a) *Broker/dealer's confirmations.* (1) A copy of the confirmation of a broker/dealer relating to the securities transaction. A bank may either have the broker/dealer send the confirmation directly to the bank's customer or send a copy of the broker/dealer's confirmation to the customer upon receipt of the confirmation by the bank. If a bank chooses to send a copy of the broker/dealer's confirmation, it must be sent within one business day from the bank's receipt of the broker/dealer's confirmation; and

(2) If the bank is to receive remuneration from the customer or any other source in connection with the transaction, a statement of the source and amount of any remuneration to be received if such would be required under paragraph (b)(6) of this section; or

(b) *Written notification.* A written notification disclosing:

- (1) Name of the bank;
- (2) Name of the customer;
- (3) Whether the bank is acting as agent for such customer, as agent for both such customer and some other person, as principal for its own account, or in any other capacity;
- (4) The date and time of execution, or the fact that the time of execution will be furnished within a reasonable time

upon written request of the customer, and the identity, price, and number of shares or units (or principal amount in the case of debt securities) of the security purchased or sold by the customer;

(5) The amount of any remuneration received or to be received, directly or indirectly, by any broker/dealer from such customer in connection with the transaction;

(6)(i) The amount of any remuneration received or to be received by the bank from the customer, and the source and amount of any other remuneration received or to be received by the bank in connection with the transaction, unless:

(A) Remuneration is determined pursuant to a prior written agreement between the bank and the customer; or

(B) In the case of government securities and municipal securities, the bank received the remuneration in other than an agency transaction; or

(C) In the case of open end investment company securities, the bank has provided the customer with a current prospectus which discloses all current fees, loads and expenses at or before completion of the transaction;

(ii) If the bank elects not to disclose the source and amount of remuneration it has or will receive from a party other than the customer pursuant to paragraph (b)(6)(i) (A), (B), or (C) of this section, the written notification must disclose whether the bank has received or will receive remuneration from a party other than the customer, and that the bank will furnish within a reasonable time the source and amount of this remuneration upon written request of the customer. This election is not available, however, if, with respect to a purchase, the bank was participating in a distribution of that security; or, with respect to a sale, the bank was participating in a tender offer for that security;

(7) Name of the broker/dealer utilized; or where there is no broker/dealer, the name of the person from whom the security was purchased or to whom the security was sold, or a statement that the bank will furnish this information within a reasonable time upon written request;

(8) In the case of a transaction in a debt security subject to redemption be-

fore maturity, a statement to the effect that the debt security may be redeemed in whole or in part before maturity, that the redemption could affect the yield represented and that additional information is available upon request;

(9) In the case of a transaction in a debt security effected exclusively on the basis of a dollar price:

(i) The dollar price at which the transaction was effected; and

(ii) The yield to maturity calculated from the dollar price, provided however, that this shall not apply to a transaction in a debt security that either has a maturity date that may be extended by the issuer thereof, with a variable interest payable thereon, or is an asset-backed security that represents an interest in or is secured by a pool of receivables or other financial assets that are subject continuously to prepayment;

(10) In the case of a transaction in a debt security effected on the basis of yield:

(i) The yield at which the transaction was effected, including the percentage amount and its characterization (e.g., current yield, yield to maturity, or yield to call) and if effected at yield to call, the type of call, the call date and call price;

(ii) The dollar price calculated from the yield at which the transaction was effected; and

(iii) If effected on a basis other than yield to maturity and the yield to maturity is lower than the represented yield, the yield to maturity as well as the represented yield; provided however, that this paragraph (b)(10) shall not apply to a transaction in a debt security that either has a maturity date that may be extended by the issuer with a variable interest rate payable thereon, or is an asset-backed security that represents an interest in or is secured by a pool of receivables or other financial assets that are subject continuously to prepayment;

(11) In the case of a transaction in a debt security that is an asset-backed security, which represents an interest in or is secured by a pool of receivables or other financial assets that are subject continuously to prepayment, a statement indicating that the actual

yield of the asset-backed security may vary according to the rate at which the underlying receivables or other financial assets are prepaid and a statement of the fact that information concerning the factors that affect yield (including at a minimum estimated yield, weighted average life, and the prepayment assumptions underlying yield) will be furnished upon written request of the customer; and

(12) In the case of a transaction in a debt security, other than a government security, that the security is unrated by a nationally recognized statistical rating organization, if that is the case.

§344.6 Notification by agreement; alternative forms and times of notification.

A bank may elect to use the following alternative notification procedures if the transaction is effected for:

(a) *Notification by agreement.* Accounts (except periodic plans) where the bank does not exercise investment discretion and the bank and the customer agree in writing to a different arrangement as to the time and content of the written notification; provided however, that such agreement makes clear the customer's right to receive the written notification pursuant to §344.5 (a) or (b) at no additional cost to the customer.

(b) *Trust accounts.* Accounts (except collective investment funds) where the bank exercises investment discretion in other than in an agency capacity, in which instance the bank shall, upon request of the person having the power to terminate the account or, if there is no such person, upon the request of any person holding a vested beneficial interest in such account, give or send to such person the written notification within a reasonable time. The bank may charge such person a reasonable fee for providing this information.

(c) *Agency accounts.* Accounts where the bank exercises investment discretion in an agency capacity, in which instance:

(1) The bank shall give or send to each customer not less frequently than once every three months an itemized statement which shall specify the funds and securities in the custody or possession of the bank at the end of

such period and all debits, credits and transactions in the customer's accounts during such period; and

(2) If requested by the customer, the bank shall give or send to each customer within a reasonable time the written notification described in §344.5. The bank may charge a reasonable fee for providing the information described in §344.5.

(d) *Cash management sweep accounts.* A bank effecting a securities transaction for a cash management sweep account shall give or send its customer a written statement, in the same form as required under paragraph (f) of this section, for each month in which a purchase or sale of a security takes place in the account and not less than once every three months if there are no securities transactions in the account. Notwithstanding the provisions of this paragraph (d), banks that retain custody of government securities that are the subject of a hold-in-custody repurchase agreement are subject to the requirements of 17 CFR 403.5(d).

(e) *Collective investment fund accounts.* The bank shall at least annually give or send to the customer a copy of a financial report of the fund, or provide notice that a copy of such report is available and will be furnished upon request to each person to whom a regular periodic accounting would ordinarily be rendered with respect to each participating account. This report shall be based upon an audit made by independent public accountants or internal auditors responsible only to the board of directors of the bank.

(f) *Periodic plan accounts.* The bank shall give or send to the customer not less than once every three months a written statement showing:

(1) The funds and securities in the custody or possession of the bank;

(2) All service charges and commissions paid by the customer in connection with the transaction; and

(3) All other debits and credits of the customer's account involved in the transaction; provided that upon written request of the customer, the bank shall give or send the information described in §344.5, except that any such information relating to remuneration